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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,977	06/27/2001	Kirk D. Smith	WTI-2-CON	4764
22827	7590	02/11/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,977

Applicant(s)

SMITH ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 113-116 and 118-151 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 113-116 and 118-151 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed December 2, 2004, has been entered. Claim 113 has been amended, while claim 117 has been cancelled as requested.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 113-116 and 121-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,380,574 issued to Katoh et al. in view of US 4,053,668 issued to Kimmel et al.

Said claims were previously rejected under 102/103 with the Katoh reference.

Independent claim 113 has been amended to include the limitation of claim 117. Thus, claims 113-116 and 121-132 are rejected for reasons analogous to those of the rejection of claim 117.

To reiterate, Katoh discloses a double-sided carpet mat comprising a primary backing consisting of a base fabric and a nonwoven fabric, wherein said primary backing has yarn piles tufted therethrough (abstract). Specifically, the base fabric is preferably a plain weave fabric of polypropylene tape yarns, while the nonwoven fabric may be a needlepunched nonwoven having binder fibers or a spunbond nonwoven (col. 2, lines 46-53 and col. 2, line 67-col. 3, line 24). Suitable materials for said nonwoven include fibers such as polyethylene, polypropylene, polyamide, or polyester filaments (col. 2, lines 54-66). The base fabric and the nonwoven fabric

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are united by needlepunching (col. 3, lines 35-60). The basis weight of the nonwoven fabric preferably ranges from 30-300g/m² (about 0.9-9 osy) (col. 3 lines 8-10).

Thus, Katoh teaches the presently invention with the exception of the claimed dimensional stability and woven fabric basis weight. With respect to the latter, Katoh fails to explicitly teach a basis weight of the woven backing fabric. However, Katoh does teach said woven fabric is a plain weave, polypropylene tape yarn fabric. Such fabrics are conventional materials in the art for primary backings. For example, Kimmel teaches one embodiment of a conventional primary backing comprising woven polypropylene ribbon filaments (i.e., tape yarns) has a basis weight of 3.3 osy and a fabric count of 30 x 11 (i.e., 30 ends/in by 11 picks/in) (col. 2, lines 31-45). Hence, it would have been obvious to one skilled in the art to employ a known construction (e.g., basis weight and fabric count) for the woven polypropylene primary backing of the Katoh invention. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

With respect to the former exception (i.e., claimed dimensional stability), it is reasonable to presume that the Katoh invention when modified with the Kimmel basis weight will possess said dimensional stability. Support for said presumption is found in the use of like materials (i.e., woven polypropylene monofilament tape yarn scrim and bonded polypropylene or polyester nonwoven) and the use of like processes (i.e., needlepunching said scrim and said nonwoven into a primary backing and then tufting said primary backing). The burden is upon applicant to move otherwise. Therefore, claims 113-116 and 121-132 are rejected as being obvious over the cited prior art.

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4. Claims 118-120 and 133-151 stand are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,380,574 issued to Katoh et al. in view of US 4,053,668 issued to Kimmel et al. as set forth in section 8 of the last Office Action.

Response to Arguments

5. Applicant's arguments filed with the amendment of December 2, 2004, have been fully considered but they are not persuasive with respect to the rejections based upon Katoh and Kimmel. However, with respect to the rejection based upon Gee (section 9 of the last Office Action), said arguments have been found persuasive and the rejection is hereby withdrawn. Specifically, Gee teaches away from needling together the layers into a composite primary backing before tufting.

6. Applicant traverses the 103 rejection of Katoh and Kimmel by asserting that there is not proper motivation to combine the multi-layered mat or rug of Katoh with the unitary backing of Kimmel (paragraph spanning pages 8-9). This argument is found unpersuasive since Kimmel is relied upon only to teach the specifics (i.e., basis weight and fabric count) of the woven primary backing that Katoh failed to disclose. Katoh employs plain weave woven fabrics of polypropylene tape yarns for the woven layer of the composite primary backing (col. 2, lines 46-53). From the disclosure of Katoh (i.e., tape width and thickness)—or, the lack thereof (i.e., basis weight and weave count)—it appears said woven layer is a conventional woven primary backing well known in the art. The Kimmel reference is relied upon as one reference that shows these well-known conventional polypropylene woven primary backings have the claimed basis weight and weave count. Additionally, it is noted that the examiner can at applicant's request

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readily provide other references citing conventional polypropylene woven primary backings having the claimed basis weights (e.g., Amoco Fabric's series of PolyBac[®] and Synthetic Industries series of woven polypropylene tape yarn primary carpet backings). It is also noted that applicant's own invention employs these well known conventional or standard polypropylene woven tape primary backings for the woven layer of the composite primary backing. As such, the examiner believes the combination of prior art is proper and does not believe the claimed basis weight of the woven layer is a patentable feature over the prior art. Therefore, applicant's argument is found unpersuasive.

7. Applicant also argues that the Katoh and Kimmel references fail to teach the claimed dimensional stability (Amendment, page 9). Specifically, applicant asserts said claimed dimensional stability is dependent upon a variety of factors, including types of components utilized, weight ratio of components, and needling process. This argument is unpersuasive since the prior art teaches the claimed structural and chemical features of the composite primary backing. As such, it must have the same physical properties as presently claimed invention. Like materials cannot have mutually exclusive properties. Additionally, it is noted that the features upon which applicant relies (i.e., types of components utilized, weight ratio of components, and needling process) are not recited in combination in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). If applicant's claimed dimensional stability is dependent upon specific needling parameters, weight ratios, etc., then these features should be included in the claims. Therefore, applicant's arguments are found unpersuasive and the above rejections are hereby maintained.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

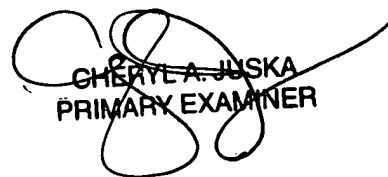
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
February 9, 2005